IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.283 OF 2006

Jayant Ganapati Belekar ...Appellant

Vs.

Ramnath Vasant Belekar & Ors. ...Respondents

Mr.S.M.Kamble for the Appellant
None for the Respondents.

CORAM: A.S.OKA, J.
DATED: APRIL 3,2006.

P.C.:

1. Heard Shri Kamble for the Appellant-Plaintiff. He submitted that in the suit filed by the Appellant-Plaintiff, there was a challenge to the will allegedly executed by Saraswatibai, the alleged adoptive mother of the Appellant. He submitted that the Appellate court has not at all considered the evidence led by the parties as regards execution of the will and in fact the Appellate Court has declined to consider the said issue. He submitted that there is no such Will executed by the said Saraswatibai and the Appellant will get her property as her adopted son. He therefore submitted that the decision of the Appellate Court is illegal. He submitted that as the deed of adoption relied upon by the Appellant is a registered deed of adoption, the adoption which is reflected in the said deed will have to be presumed to be legal.

2. Perusal of the plaint shows that the Appellant is

claiming to be the adopted son of Ganpati Hari and his wife Saraswatibai. The entire right claimed by the Appellant is only on the basis of the adoption. Even assuming that the will executed by the deceased Saraswatibai was not legal and valid, the Appellant cannot succeed unless legal adoption is established by him. The Trial court has framed a specific issue on the legality and validity of the adoption of the Appellant. The Appellate Court has also considered this aspect by framing a specific point for determination. The Courts have found that the person giving in adoption has not signed the adoption deed. Both the courts have found that both the genitive and adoptive mothers have not signed the adoption deed and there was no evidence at all to show that both of them have consented for such adoption. In absence of any evidence to show the consent for adoption, a finding has been recorded that the valid adoption is not established by the Appellant-Plaintiff. The said finding has been recorded after appreciation of oral and documentary evidence on record. Such finding cannot be interfered with in the Second Appeal filed under section 100 of the Code of Civil Procedure,1908.

3. If the Appellant failed to prove adoption, issue regarding validity of the will executed by the said Saraswatibai ceases to have any relevance. There is no merit in the Appeal and the same is dismissed with no order as to

costs.

Judge.